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**HOW DEMOCRATIC INTERNAL LAW LEADS
TO LOW COST EFFICIENT PROCESSES :
PRACTICES AS A MEDIUM OF INTERACTION
BETWEEN INSTITUTION AND ORGANIZATION**

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ABSTRACT

Keywords: practices, constitutional law, organizational routines, French institutionalism, retail banking sector

According to Sewell's principle of the multiplicity and the intersection of the structures, we consider here a retailing bank as an organization and as an institution. As an institution, the studied bank appears to be a constitutional democracy, whereas, as an organization, it proves to be a very efficient low cost company. Organizational and institutional features of this firm look correlated and this correlation is interpreted as an interaction between institution and organization, which takes place through the medium of interconnected practices inside the firm.

Institutional features are analyzed through Hauriou's institutionalism and Turpin's Constitutional laws theory, whereas organizational routines are described through a triadic model (Ostensive aspect, performance and artifacts) proposed by Pentland and Feldman.

Through the study of induction practice and interactions between this practice and other ones inside the firm, we map systematically induction's practising in the sense of Pesqueux and establish a dual influence of institution on organization. Firstly, there is a mainstream influence from constitutional law to organizational routines, through interconnection with an intermediate step called "institutional routines". Secondly, there is a "coherence" effect, by which some peculiarities of several organizational routines reinforce each other in the day-to-day life of the firm.

Finally, we discuss the possibility of building a constitutional theory of the firm. We emphasize the structuring role of law and the specific influence of political constitutional law on the empowerment of employees, through the dialectic tension between law and other components of the institution.

INTRODUCTION

A – THEORETICAL FRAMEWORK

Every firm may be described according to several overlapping dimensions: for example the organizational, institutional, political, professional or even biological ones. Every dimension itself may also have several definitions, in which the mutual extents of – for example - the organizational and the political one may be quite separate or on the contrary almost the same. The study of diverse dimensions of the same firm leads to describe diverse structures that coexist and interact within practices.

Such a point of view can be related to the concept of the multiplicity and the intersection of the structures, defined by Sewell (SEWELL, 1992), and used by Martha Feldman (FELDMAN, 2003: 747). As the latter explains: “the multiplicity of structures refers to the observation that social systems ‘are based on practices that derive from many distinct structures’ having ‘different logics and dynamics’ (SEWELL, 1992: 16). Organizations, thus, have informal structures, hierarchical authority structures and temporal structures, just to name a few.”

1 - Importance of the institutional dimension for the study of practices

It is commonly admitted that organizational and political dimension of the firm determine major levers by which managers can exert a certain influence on practices inside the firm. Our case study led us to emphasize the importance of the institutional dimension, and of its interdependence with the organizational one. Let us consider that an *organization has to do with “coordination of persons and things in order to exert determined functions”¹*, whereas an *institution consists in a “normative complex”²*, whose *principal elements*³ are “aims of a higher order”, “foundation by rules which have force of law (are valid for everyone)” and are characterized by a high stability.

It is not unreasonable to consider practices as “stable patterns of action”, which could in certain sense be meant by “routines”, even if we don’t pretend that practices are *only* routines or only the performative aspect of routines. Then it looks natural that, on one side, when the organizational point of view is relevant to study some practice, this practice can be correctly described as an *organizational routine*. On the other side if it proves that the institutional point of view is relevant to study some practice, then it may be correctly described as an *institutional routine*. According to Sewell’s principle quoted above, ‘Structures or structural complexes intersect and overlap’ (SEWELL, 1992: 19 in FELDMAN, 2003 : 747). In so far as organizational and institutional dimensions of the firm

¹ VATTIMO 2002, p. 1188

² VATTIMO 2002, p. 800,

³ PESQUEUX 2007, p. 17,

may intersect and overlap, practices are likely to be described both as organizational and institutional routines, but, as we could establish in our case study, one dimension frequently prevails over the other.

2 - Theoretical framework for organizational routines

Martha Feldman and Brian Pentland proposed a theoretical framework for organizational routines involved in a perpetual process of reproduction and self-transformation (PENTLAND and FELDMAN, 2005). As explained by these authors, such a view about routines is coherent with a general paradigm explaining the dynamic equilibrium of social phenomena, as exposed for example by GIDDENS (1984) or BOURDIEU (1977, 1990). But the peculiarity of their framework consists in decomposing every practice into three aspects inspired by Latour's Action Network Theory (LATOURET, 1987): the ostensive, the performative and the artifacts. The ostensive aspect of the routine is its "abstract pattern"; it consists in the pattern by which people bring the practice to mind. The performative aspect of the routine consists in the specific actions people actually perform. The artifacts are material products related to the practice like flow charts, Standard Operation Procedures, etc. The generative properties of routines emerge from two dynamics: an endogenous dynamic produced by the tensions which come out between the ostensive aspect, the performative aspect, and the artifact of the practice. An exogenous dynamic produced by the interaction of the practice with other ones. As exposed by Martha Feldman (FELDMAN, 2003), organizational routines can influence each other through one of the three aspects, for example the performative one. We used this framework to describe the organizational dimension of practices and interaction between practices, and to confront our observations with some conjectures and results of Pentland and Feldman.

3 - Theoretical framework for institutional routines

As exposed by Yvon Pesqueux (PESQUEUX, 2007), many theories of institution are at disposal, but most of them are not able to integrate the dimension of conflict, whose importance is crucial in our case study. Maurice Hauriou's "theory of the institution and the foundation" (HAURIOU, 1925 ; HAURIOU, 1986) doesn't present this drawback. According to HAURIOU, conflicts are present in a very analogous way both in the spirit of every individual and inside the institution. This conflict has to be expressed and solved through "crisis of communion" by which all parts converge to consensus, some of them because they agree with the decision (the *liber volui*) , some other because they finally express loyalty to the institution and its aims (the *coactus volui*). The conflict solving design of Hauriou is procedural: the procedure is called "deliberation" and presents strong analogies with Habermas' "discussion" (HABERMAS, 1997).

There is a second reason for choosing Hauriou's institutionalism when analyzing our case. According to Pesqueux, "Hauriou's theory is particularly appropriate to explain "the institutionalization of such movements like mutualism and public health care in France, at the end of the XIXth Century" (PESQUEUX,

2007 : p. 20). In fact the studied firm – the Crédit Mutuel - is a “mutualist” institution and the history of its institutional construction is fully in accordance with Hauriou’s theory, as will be explained below (part I). Moreover, Hauriou explains why and how an institution must be considered as a legitimate source of law, through “dialectic tension between the state and other social corps” (PESQUEUX 2007, p. 20). This is particularly relevant for our study, because of the existence of an “internal law” produced inside the Crédit Mutuel, exerting a major influence on the practices performed inside the firm.

Naturally Hauriou, as a French law professor who died in 1929, never used the term “institutional routine”. We propose to define the term as following: *an institutional routine is a routine whose characteristics are directly determined by the constituents of the institution inside which it is performed.*

Hauriou stated the thesis that there is a natural trend inside every institution, that he calls “interiorization”, which means that more and more people interiorize more and more a common idea of work in their spirit. When a certain degree of interiorization is reached, the institution has come to the stage of “personification”. At this stage the institution has produced a set of “rules of law”, “statutes” and “higher principles of law”.

According to our definition, routines by which the day-to-day life of the institution is performed (like tactics of deliberating in an assembly) can be considered as institutional routines. As exposed above, many routines in the firm present both an organizational and an institutional aspect. Our definition allows us to consider some practices, whose features are a direct consequence of the institutional peculiarities of the firm, as institutional routines, interacting with “more organizational” routines and influencing them.

4 - Practices as a medium of interaction between institution and organization.

With such definitions, institutional and organizational routines have many characteristics in common. As involving “multiple actors and interdependent actions” (PENTLAND and FELDMAN, 2005: 795), they can be distinguished from individual routines. Indeed, particularly in the case of highly interiorized institutions, institutional routines must definitively produce “repetitive, recognizable patterns of interdependent actions, carried out by multiple actors” (PENTLAND and FELDMAN, 2003: 795).

Pentland and Feldman consider that “identifying a particular routine is a bit like trying to isolate the Gulf Stream from the Atlantic Ocean” (PENTLAND and FELDMAN, 2005: 798). What organizational and institutional routines have then in common is an ocean of actions, representations and artifacts by which they take place inside human collectivities. This complex set, crossed by many simultaneous streams, can be considered as the medium of interaction between organizational and institutional routines.

Why are practices so important for this mediation? As Pentland and Feldman explain “practice is inherently improvisatory” but “improvisation involves listening to what others are playing” (PENTLAND and FELDMAN, 2005: 796).

From our point of view, improvisation also involves inspiration from scores that the other ones have in mind if they belong to the same community. Pesqueux (PESQUEUX, 2007) calls “practising” this semi-deterministic (as well as semi-stochastic) phenomenon, located at the interface between performative (the action) and ostensive (the score in mind).

The moment of practising involves openness to other actions, other people, other practices, openness to reason but also to intuition and unconscious: it is the connecting node between many things, including several practices and, as such, institutional and organizational dimensions of the firm.

B – RESEARCH QUESTION, RESEARCH SETTINGS, METHODS AND MAP OF THE PAPER.

Is it possible to establish a relationship between institutional peculiarities of one firm and its efficiency? We studied the case of French retailing bank, the Crédit Mutuel Centre Est Europe (CMCEE), whose internal rights and statutes form a set of institutional peculiarities. Our challenge is thus to prove that these institutional features have an effect on this firm's management and efficiency, through the medium of several interacting practices.

This study was conducted through a series of semi-directing interviews of employees and elected members of the CMCEE (Nine people, 30 hours), the direct observation of practices (10hours), the lecture of meetings minutes and the collection of internal documents describing the specific rights and statutes of the firm.

The steps of our demonstration are the following :

Firstly (part I of this paper), we describe some general data about the studied retailing bank, and stress its organizational and institutional peculiarities.

Secondly (Part II of this paper), we briefly recall the idiosyncratic peculiarities of induction practice inside the CMCEE⁴ and explain that this peculiarities are perpetually created and recreated through the interaction with a set of interconnected practices, among which institutional routines transmit the influence of institution to organization.

Thirdly (Part III of this paper), we discuss the possibility of proposing a theory of the political constitution of the firm, and emphasize the necessity of a political constitutional law inside the firm.

⁴ described in detail in another paper : JARDAT, 2006

II – INSTITUTIONAL FEATURES OF THE CREDIT MUTUEL

A- GENERAL FIGURES AND FACTS

The *Crédit Mutuel Centre Est Europe* (CMCEE) is part of the *Crédit Mutuel*, which is a major actor of retail banking in France (the second one in size after *Crédit Agricole*), and regularly expresses pride for its own Capital stocks (12,5 G€ in 2004), its growth and its profitability.

On one side, the *Crédit Mutuel* is a classical retail bank involved in insurance and other peripheral financial service activities, with apparently classical management practices. But on the other side, the *Credit Mutuel* is also a paradoxical organization, which competes with corporations without really being one of them.

This bank is a highly decentralized organization, with a rather strong local empowerment. The CMCEE is a Federation of 600 *Caisses*, each of them being a bank on its own, in charge of performing its own profit and monitoring its own prudential ratios.

Some functional services and transversal activities are performed by federal entities. Inside the *Crédit Mutuel*, all these entities are called “The second degree”. Some of these entities are subsidiaries and provide various services to the *Caisses* : asset management, technology, insurance products management, etc.

B – THE INSTITUTIONAL DIMENSION: A DEMOCRATIC FEDERAL GOVERNMENT

1°) A down-top legal architecture

The *Caisse* is the “basic cell” of the CMCEE. Every *Caisse* is a juridical autonomous entity, whose legal status is called “cooperative association with variable capital”. The *Caisse* is an association owned by its members and ruled by the legal status of the French association law, including the sovereign power of the general assembly, as well as the existence of a board of directors and a supervisory board. Every customer of the *Caisse* can become a member by buying shares.

Each local *Caisse* owns shares of the “Federal *Caisse*”, so that this central bank is a subsidiary of the Federate. At the same time, the “second degree” federation with its central services is an association whose members are elected by the federate *Caisses*.

The “Federative Bank” owns the various technical and financial service societies, but is itself owned by the federate *Caisses*.

As we can see, from a legal point of view, the decentralized entities are the parent of the centralized ones, whereas, most of time in business, the central

rules and/or owns the local. That legal peculiarity is a first explanation for the peculiar organization of the bank.

2°) A democracy principle, a dual power at every step

The general assemblies at the *Crédit Mutuel* differ widely from the ones of a capitalistic society: the principal “one man, one vote” is fully respected, whatever the amount of shares every one is owner of.

Besides, at every degree of the Federation, there is a co-management by the professional director and the board of elected members. The same principle of co-management is present at a more centralized level. Locally, several *Caisses* form together a cluster called “*district*”, inside which they can take some decisions in common. The elected boards of the *Caisses* elect the President of this “*district*”. This intermediate level corresponds to an intermediate level of the organization called the “regional services”, which are local parts of the Federation.

At the very top federal level, we can localize the “General Director” of the Federation and his staff. The members of the central offices and committees are managed and recruited by the general director, who is himself chosen by the President of the Federation. This President is himself elected by the democratically elected instances of government, so that, through a cascade of political representations, every member of the central management is under control of the basic elected members.

3°) A constitutional government for the firm

The CMCEE has developed an unique institutional architecture which largely exceeds the traditional statutes derived from the cooperative associations law. The following elements exist only inside the CMCEE and nowhere else :

There is a set of written rights and statutes, of purely internal value, that rule the decision making and the institutional relationships between the different parts of the federation. These rights and statutes are formulated in terms that are usually the ones of the constitutional law of a State. We can consider that they establish a sort of **political constitutional law** for the CMCEE.

This written constitutional law is explicitly based on the “separation of powers”. These powers are in a number of three: an “executive power” exerted by the President, the federal board of directors and the general director chosen by the president, the “legislative” power of a “syndicate room” also called “parliament”, and the “judiciary” power of “arbitral jury”. Official documents describe a set of checks and balances between these three powers as well as rules for the election of people at each of these powers.

The main institutional knot of The CMCEE is the “parliament”. Its members are elected, partly by the elected members of the *Caisse* Boards directly, partly by the *Caisse* Presidents and the District President, partly by the employees of the *Caisses*, regional Directions, federal departments and

subsidiaries, and partly by the trade unions. It is also specified that a couple of seats is reserved for local politicians. This “Parliament” is in charge of voting the “resolutions” (i.e. the decisions) submitted by the executive power. The syndicate Chamber plays a vital role in this government system. Every decision affecting the conditions of doing business for the *Caisses*, for example the price of cash in the internal market is submitted to its vote. Every strategic decision, for example the purchase of another bank like the CIC, must be voted by the parliament.

The spirit of this constitution is expressed as the “*subsidiarity*” principle, designed to maintain the local power as strong as possible: “The nearest organ to the user should achieve all relevant tasks, leaving organs at an upper level (federations, co-ordinations, groups) perform the tasks it cannot itself sufficiently achieve. On the contrary, the federal organ should not achieve the tasks that an organ at lower level could achieve sufficiently⁵.” We can then understand that the decentralized management, on the organizational dimension, reflects fully the institutional principle of *subsidiarity*.

⁵ Internal document [DG,2], p. 3

- The CMCEE's anatomy: the *idea of enterprise* is 'to be a social bank' and is present since the creation of the first *Caisses* (Raiffeisen's movement). The *organized power and the organs of the institution* are highly elaborated, through a complete set of rights and statutes. The manifestations of communion are multiple : federate and federal general assemblies, as well as sessions of the syndicate chamber.
- The CMCEE's physiology: the *foundation of Caisses*, as well as the periodical re-foundation of federal institutions and new statutes, follow Hauriou's principles, particularly the *common will manifestations*. *Deliberations in assembly, decisions of the board and decisions of the director* are part of the CMCEE's day-to-day life.
- The history : the CMCEE's degree of *interiorization* looks quite high : the central role of the *organ of deliberating power* and the separation of powers, show that the institution has reached the stage of *personification* which, according to Hauriou (HAURIOU, 1986 : 110) allows a *political liberty* to take place inside the institution. This evolution towards personification has lasted more than 100 years, and was punctuated by *crises of communion*. As forecast by Hauriou, the CMCEE, as a mature institution, has become an *autonomous source of the law*, producing its own rights, statutes, and even what we may call an internal constitutional law.

With such institutional features, being the ones of a representative democracy conducted by an idea of enterprise, one can expect that, from an organizational point of view, the CMCEE may be a participative organization with a quite high rate of empowerment, at least for decentralized middle managers (the *Caisse* directors). This empowerment may favor an organizational learning based on a "distributed intelligence", allowing quite good adaptation to the customers' needs and evolution.

But how do the institutional features of the CMCEE transmit their effects on the organizational life? A look at the practices that are performed inside this firm may give us some elements of answer.

II – INTERACTION OF ORGANIZATIONAL ROUTINES WITH THE INSTITUTION: THE CASE OF INDUCTION

It has been previously established (JARDAT, 2006; JARDAT, 2007) that induction inside the CMCEE is a low cost efficient process, especially if compared with induction inside another typically centralized bank. A description of induction practice through Feldman and Pentland's grid shows (i) concerning the ostensive aspect, a very homogenous and quite stable process, (ii) concerning the performative aspect, a great liberty for the federate *Caisses*, (iii)

concerning the artifact, the absence of any Standard Operating Procedure (SOP). According to Feldman and Pentland (FELDMAN and PENTLAND, 2005:799), this tends to prove that induction is a very interiorized practice, in a context of high empowerment of the working people.

HR Federal department considers itself as a “service provider” for the *Caisses*, and that *Caisses*’ directors are “the real HR directors of the CMCEE”. Moreover, it was explained that the current induction process was established 10 years ago, through a change process that stressed consensus building with the federate managers.

It is thus tempting to infer that such a situation is the product of the CMCEE’s institutional features. The consensus of the change may have produced an efficient induction process, due to the loyalty of the federate directors as well as the decentralized pattern of induction organization that came out of the negotiation between federate and federal. The search for consensus itself may be the compulsory consequence of a democratic constitutional law that would make every dictatorial practice implementation impossible for the federal. To summarize, the low cost decentralized induction process might reflect the “subsidiarity principle”, that is the “spirit” of the CMCEE’s constitution.

We are going to try to prove this by revealing the influence of the CMCEE’s institution on its induction process, through the interaction among diverse practices inside this firm.

A – INTERACTION WITH OTHER ORGANIZATIONAL ROUTINES

There are some significant organizational routines that contribute to make induction practice interiorized and empowered. A first set of such routines is constituted by every functional service delivery from federal departments to *Caisses* (§1). These routines produce and reproduce the peculiar service *ethos* of federal departments. A second set of influent organizational routines can be identified through the more or less formal meetings that gather federate and federal employees, in order to deal with project management or diverse organizational problems (§2). These routines contribute to produce and reproduce an *ethos* of the search for consensus with federate managers.

1 – The delivery of services by federal departments

Although every *Caisse* is itself a bank, many functional activities are not performed by the *Caisse* but by federal departments. This has for consequence certain homogeneity of processes and products inside the CMCEE, as well as economies of scale.

However, the relationships between *Caisses* and federal departments are all but hierarchic. As a *Caisse* managing director explains: “we are independent. For example, if we consider here that the new savings products proposed by the marketing are not convenient, we can decide not to sell them. If we are skeptical about the success of the product, we can delay its implementation and wait until other *Caisses* have used it. If there are enough successes, then we adopt the product. No *Caisse* will ever be blamed by the federation for having this sort of attitude.” The same habits and behaviors occur concerning other functions: “We can purchase equipments ourselves if we prefer, as soon as there is

compatibility with the rest of the system”; “we can perform recruitment through the help of an external recruitment firm if we prefer”.

Paradoxically, the recourse to external service providers instead of federal departments is very scarce. *Caisses* directors explain that they usually prefer services from the federal because they offer the best quality / price ratio, or because they observe the success that other federate *Caisses* obtain thanks to these product and services.

There is a whole set of service provision practices, related to several functions, by which a service-to-customer ethos is produced and reproduced. To maintain their legitimacy, federal departments have to design and perform efficient low cost services for *Caisses*, including service attitudes like openness to *Caisses*' needs and concerns, which contribute to sediment day after day the idea that relationships between the federate and the federal are not hierarchy but partnership. The production and re-production of induction practice influences and is continuously influenced by the production and reproduction of other functional practices involving *Caisses* and federation.

2 – Meetings with *Caisses*

There is another set of relationships with *Caisses* in which the Federal tends to produce and reproduce a given ethos: project meetings, periodical inspection of the accounting system, and presentation of new projects or strategies. What these meetings have in common is a problem solving purpose. The way a solution is sought after is always the search for consensus.

This search for consensus begins frequently with a quasi ritual that could be called “manifestation on contrition”. As several interviewed people explained, as well at the federate level as at the federal, the federal general director uses a very famous slogan: “in these meetings you [the federal] are here to be blamed [by the *Caisses*]”.

Certainly, such a practice contributes to make other practices involving *Caisses* and federal department more consensual. Probably, there is a reciprocal influence between such ordinary life rituals and more punctual change processes, in so far as both are characterized by consensus building. This particular meeting ritual illustrates how many day-to-day practices contribute to reproduce values and related ways of performing diverse management practices.

B – INTERACTION WITH INSTITUTIONAL ROUTINES

Organizational changes occur in various fields inside the CMCEE. If one takes only one of these fields into account, major changes may look quite scarce : for example induction practice remained stable for the last ten years. But, if one considers the set of all the major changes that took place within the last 10 years, it is possible to establish that: (i) a major change happens at least every 3-4 years and lasts about the same time, so that the existence some major change

is permanent, (ii) all these changes have some characteristics in common so that they form a common pattern of change management and (iii) the CMCEE's institutions play a major role in these changes. Thus, we consider such patterns of action as institutional routines.

The main pattern could be named "change from the top practice". It is a very special way of initiating and favoring a change wanted by the federal level, and the establishment of new induction practice is part of this institutional routine.

Every person who tries to explain the peculiarities of the CMCEE comes to tell a set of stories about some major changes which occurred within the last twenty years. The composition of this set may vary according to the interviewed person, but crosschecks show that none of these stories is an isolated memory. It is likely that these stories are widespread inside the CMCEE and are the ostensive aspect of a common culture of change. Each of these stories has its hero and gives a not ambiguous explanation of the reasons of success or failure. They can be considered as epopees in the sense of Alasdair MacIntyre (MACINTYRE, 1985), describing allegorically what are the main virtues that structure a cultural group.

In the following, we are going to relate some of these reconstructed epopees, and then to analyze them in terms of change culture and virtues.

Epopee 1 : The data processing epopee :

"At the end of the 1970ies, the CMCEE had become quite late with the data processing. Whereas other banks had begun to automate some processes, through heavy investments in centralized data processing centres, nothing had happened inside the Crédit Mutuel yet.

Indeed, the federate "Caisses" had refused such a mutation, because they feared losing their autonomy if a part of their core business activity would then be processed inside a federal Department. The situation became more and more concerning when more and more complex banking products began to rise, like "Housing Saving Plans" for example, which couldn't be properly processed by Caisses' teams.

But then came the hero. Michel Lucas (who is currently the general director of the federation), manager at the data processing department, proposed to bid on the further development of a new arising technology: the network data processing. He managed to convince every main federate and federal decision maker, so that a consensus eventually came through. Thanks to him, the modernization of the CMCEE could take place, and in spite of its late start, could be quite quickly implemented thanks to the loyalty of the Caisses obtained."

Epopée 2 : The trade-unionist President epopee

“During the “Trente Glorieuses”⁷, Crédit Mutuel was the only bank to pay attention to the low-and-middle class customers. Thanks to this proximity, the CMCEE could achieve a very important growth when the salaries progressively were paid through bank accounts instead of being delivered in cash. This was the “bankarization”.

But, despite this major growth, the federation could evolve with respect of the autonomy of the Caisses. The hero of this epopee is Theo Braun, the former President of the CMCEE until the eighties, who was a firm promoter of the “subsidiarity” principle, whereas other top managers were supposed to have been more “jacobinic”. Moreover, Braun was a former member of a trade union. He had the intelligence to understand the CMCEE dynamics, and to decide that one shouldn’t establish a too accurate organization chart for the Federation.

This epopee is dramatically opposed to the history of the French competitors, which were nationalized in 1981 and had to experiment a very centralized and technocratic organization.”

(Anti-) Epopee 3: The anti epopee of directors centralization

“There was once a federal manager wanted to centralize more the CMCEE’s organization. In particular, he wanted to oblige systematically the Caisse directors to become employees of the federation, whereas the Caisses, through a local contract directly employed many of them. Before this attempt, the manager was promised to a brilliant future in the federation. But his project of centralization was firmly rejected by the syndicate chamber, so brutally that he could not keep his top management job and had to leave the federation.”

Interpretation of these epopees:

These stories illustrate that, at the CMCEE, the main virtue of a federal manager is the obstinate search for a consensus with federates. The failure of the anti-hero of epopee 3 demonstrates, and perpetually recalls when related inside the CMCEE, that *Caisses* (that is, their shareholders) are sovereign. Due to the constituted powers of the *Caisses* and the locally elected members, change actions from the top have to respect certain compulsory steps unless they are dramatically rejected. It is interesting to point out that these stories admit that the CMCEE presents some weaknesses, for example its inability to conduct brutal changes from the top. But at the same time, it is specified that the

⁷ In France, the so called “Trente Glorieuses” mean the 1945-1975 period.

hero transforms the weakness into a force: the efforts made to obtain a consensus guarantee a quite high efficiency of the implementation of the change, when finally approved.

From an institutionalistic point of view, these stories may be interpreted as *crises of communion* in the sense of Hauriou, by which conflict solving occurs through *deliberation*.

The hero of each of these epopees has a very special counterpart: the CMCEE's rights and statutes. None of these stories would have been the same if constitutional checks and balances had not exerted strong constraints on the process. The constitutional law of the CMCEE shaped directly what happened in these stories. One even can say that this constitution was elaborated for this purpose. Change-from-the-top practice is above all an institutional routine.

The consensual establishment of a new induction process ten years ago was not a contingent event, but an occurrence of the change-from-the-top institutional routine, directly derived from the CMCEE's constitutional law. The punctuated dynamic of change, as illustrated by induction practice, proves to be a major vector of the institution's influence on the organization.

C – A DUAL INTERACTION BETWEEN INSTITUTION AND ORGANIZATION

Induction practice is influenced by some organizational routines on the one hand and by institutional change routines on the other hand. Obviously this cannot be a complete and definitive description of interactions influencing induction. There is a bundle of multiple and diverse nets of influences among practices.

In particular, it is likely that organizational routines influencing induction are themselves in connection – may it be direct or indirect - with institutional routines. How can one imagine that the 'ritual of contrition' or the 'service ethos' of federal departments have nothing to do with the federal constitution of the CMCEE? Establishing a not ambiguous relationship between institution and these organizational routines may require long supplementary inquiries in the field. Probably the circuits of influence, from routine to routine, are longer than the direct influence of change practices. But denying their existence does not seem reasonable.

Thus, we can assume without too acute doubts that, having studied induction practice in particular, we have raised a global path of influence from institutional peculiarities of the CMCEE to its organizational features. The dynamic of influence is at least dual: there is a mainstream influence due to the punctuated dynamic of change, affecting most of the organizational routines. And there is a mutual influence of organizational routines that reinforce the specific values of the CMCEE, through a 'coherence effect'. Some organizational routines inherit the genome of consensus and empowerment from change routines that give birth to them, and then they exchange and reinforce this genome through the day-to-day interaction with other organizational routines (see fig. 2 below).

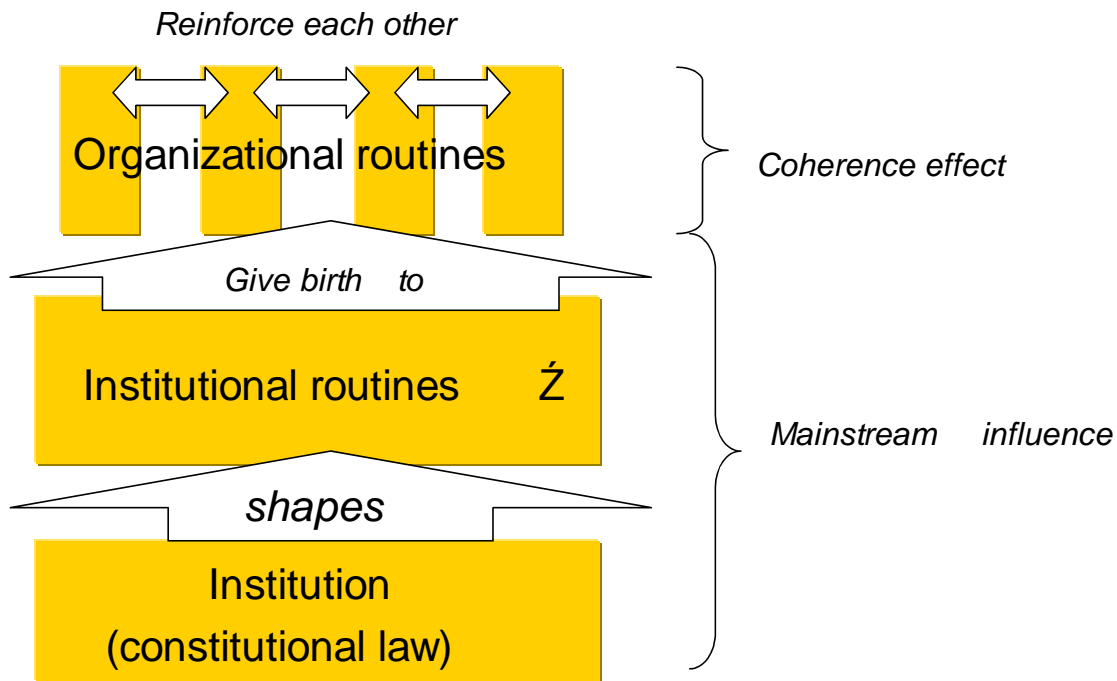


Figure 2: the dual influence of institution on organization

III – DISCUSSION: MAY WE BUILD A CONSTITUTIONAL THEORY OF THE FIRM?

Institutional features of the firm like the existence and characteristics of a constitutional law prove to have dual influence on practices, and then certain influence on its efficiency and prosperity. That is, through the medium of interconnected practices, there is a path from institution to corporate success. May we consider some institutional features as control parameters of the success of the firm?

Probably the most admitted theory of the firm is the economic one. This theory considers the corporation as a transformer of capital into profit. As profit is returning partially into capital, there is a virtuous cycle of richness sustaining the growth of the firm. In this theory, the most important control parameter is an appropriate allocation of capital in order to produce the maximum of profit (see fig. 3). Another major theory of the firm could be called the “behavioral theory”. According to this theory, the firm is a transformer of individual objectives into decisions affecting the whole organization. There were some attempts to theorize the control of the firm’s performance with this theory. For example, Ansoff (ANSOFF, 1970; JARDAT, 2005–II: 202-223) considered that decision

procedures could be appropriate control parameters of the decisions taken inside the firm (see fig. 4). None of these theories are today considered as totally false. In particular, managers are still trying to choose appropriate resource allocation inside the firm and to design appropriate decision-making procedures. Moreover, they purchase management books and management consultants for this purpose. Naturally, all these managers know, at least as an intuition, that these parameters are not sufficient.

As we admit the multiplicity and interconnection of structures, we don't seek for any reductionism considering the firm as only an institution. But, maybe, it would be interesting to raise a hidden dimension of the firm. Our aim could be to produce a theory considering the firm as a looped transformer of universes of virtues (for example: the search for federalist consensus) into practices. According to this theory, the parameters of control would consist in the political constitution inside the firm (see fig. 5).

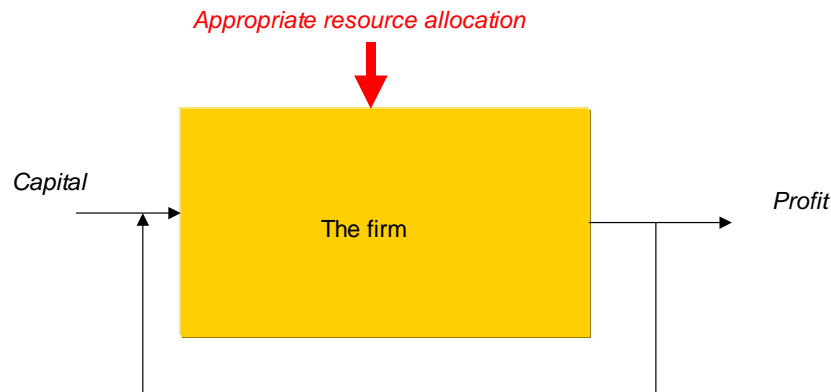


Fig.3: The economic theory of the firm

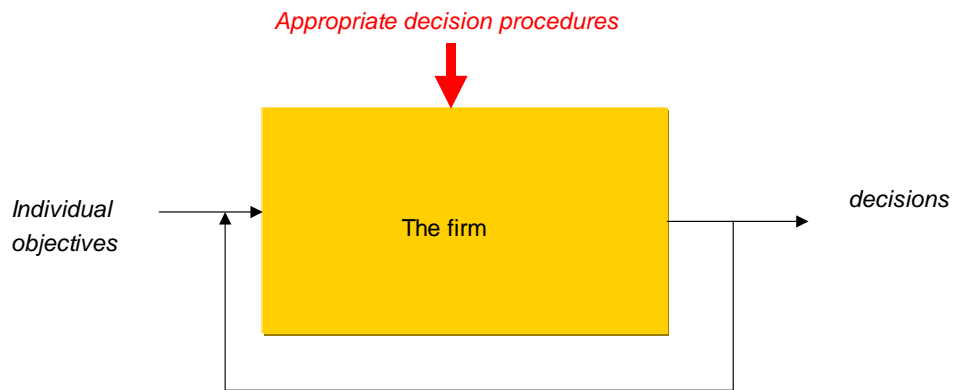


Fig. 4: The behavioral theory of the firm

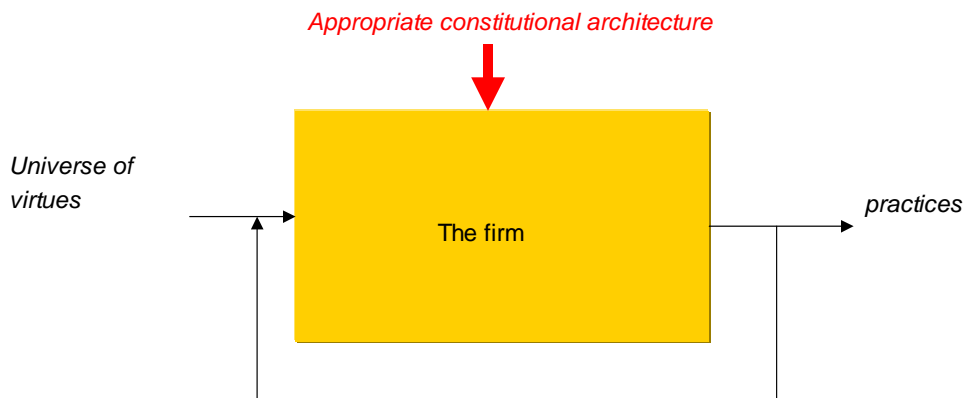


Fig. 5: The constitutional theory of the firm

A preliminary step of the construction of the constitutional theory of the firm, is to establish the necessity of the law and of the constitutional law as generators of institutional routines, which is the most heretic part of the theory.

Firstly, we must establish the structuring role of the law inside the firm-as-an-institution (Paragraph A). Secondly, we have to explain why not only law as a social constitutional law, but law as a political constitutional law is vital if we want to really shape decision making inside the firm (Paragraph B). Thirdly, we recall that such a political constitutional law, as a part of the institutional anatomy of the firm, cannot be instituted with success independently from other aspects of the institutional “foundation” in the sense of Hauriou (Paragraph C).

A – THE STRUCTURING ROLE OF LAW INSIDE THE FIRM.

The firm is an Ocean of instability with continents (perhaps only archipelagos) of stability. Not only performances have a dynamic dimension. Many apparent structures of the firm are in fact subject to quick change and instability, for example its rate of recruitment and turnover, its organizational cut into divisions, the main allocations of resources, etc. These changes are part of the firm's life, and it may be particularly noxious to inhibit inappropriately its possibilities of move.

However, law reigns over some fields of the firm's life, establishing limits that cannot be transgressed, independently from any management considerations that would motivate transgression. For example special laws may prevent the firm from lowering the salaries beyond certain limits, although this would have been a particularly appropriate solution for competition problems of the firm. And, in fact, firms respect the law much more frequently than diverse promises and commitments. It is obviously admitted that respecting the law is one of the most predictable aspects of people and firms behaviors. As Habermas explains (HABERMAS, 1997: 162), the general function of law consists in "stabilizing behavior expectations".

Thus, law may be a privileged control parameter in order to obtain behaviors that would not spontaneously take place inside the firm. In particular, law is frequently used to fight about phenomena of injustice that reflect the asymmetries of resources and power inside organizations: laws against sexual or moral harassment, social protection laws, etc. In general, we may assume that law would be a relevant instrument for the fight against organizational harmful problems that are caused by oligarchic phenomena.

Firms publish more and more "charters" of transparency, of empowerment of employees, of social responsibility, etc. But these commitments have not force of law. They are subject to change due to strategic factors or even due to changes in the top management of the firm. The possibilities of recourse for broken commitments are weak, especially for players who don't master enough resources of information and power inside the firm. For example, may we really imagine that, without its set of precise laws and statutes, the CMCEE's organization wouldn't have been subject to the general trend of centralization that occurred inside French retail banks during the 1980ies?

Hauriou thought that laws and statutes were the natural product of every "personified" institution (HAURIOU, 1986: 114-117), ensuring the continuity (*durée*) of the *idea of work* inside the institution. This must be particularly true in the case of any firm, like the CMCEE, whose aim (to be a "social bank" through the "self help") stands against the current of social inequalities.

B – THE ROLE OF A POLITICAL CONSTITUTIONAL LAW

Law is an instrument. But not every sort of law is relevant to counterbalance harmful uses and abuses of power, particularly concerning organizational life. A typical example for this is the case of French banks during the 1980ies. Most of them were nationalized, and as a consequence they adopted very protective statute laws for employees, who were considered as state servants and, for example, could not be fired for economical purpose. Despite this legal situation, nationalized firms were very “jacobinic” centralized organization with no empowerment of the employees.

This phenomenon is not really surprising, if we draw an analogy between law phenomena inside the firm and law phenomena inside the society. In his study about law and democracy, Habermas explains that (HABERMAS, 1997: 93): “only laws of politic participation found the legal, reflexive and self-referential position of citizens. On the other hand, laws that warrant negative liberty and social rights may be granted in a paternalistic way. The state of law and the welfare state are in principle possible without democracy.” Transposed to the inside of the firm, such an analysis means that one must discriminate between “welfare firm” law on one side and “political” law on the other side. Thus, elements of welfare law, like social rights inside nationalized banks are not sufficient to influence the organization in the sense of the empowerment of employees. Only elements of political law inside the firm may do it.

Within the sets of common or internal laws of the firm concerning powers, rights and participation we have then to distinguish between a *social constitutional law* on the one hand and a *political constitutional law* on the other hand. The social constitutional law exerts structuring influence on the way corporate decisions affect the stakeholders’ welfare, whereas the political constitutional law shapes the ways and manners of taking into account the wills of power and participation of these stakeholders. Thus, only the latter may have a major effect on the legitimacy of organizational change process and subsequent practices. In our case study, the checks and balances that shape the features of the CMCCE’s organizational routines belong to a political constitutional law and are part of its institutional identity, whereas the CMCEE’s social constitutional law does not differ widely from the one of its competitors’⁸. This confirms that only the former set of laws may explain the peculiarities of this firm’s organizational routines.

Legal control parameters of the generation of practices inside the firm are essentially to be found within a political constitutional law, even though there may exist interdependence between political and social rights.

C – INTERCONNECTIONS BETWEEN POLITICAL CONSTITUTIONAL LAW AND OTHER INSTITUTIONAL ELEMENTS OF THE FIRM.

⁸ “Convention AFB”

Law “has no substance” and is pure “mediation” (OPPÉTIT, 1999: 24) or “dialectics between politics and ethics” (FREUND, 1965: 285). Political constitutional law of the firm must be understood as a vector of expression and a medium of reproduction of the institutional identity of this firm.

As Maurice Hauriou explained “rules of law are not enough full of life to organize a community that would be proper to them and in which they would be expressed [...] the true objective element of the law system is the institution”. Whereas law means only “ideas of limit”, individuals and institutions are “alive and creators”, produce “ideas of enterprise” and have “power of realization” (HAURIU, 1986: 127-128).

Political constitutional law must be understood itself as a vector of expression and continuity (through “stabilization effect”) of institutional features of the firm. But it is a mandatory vector so that there is a generative loop between the existence and shape of law on the one hand and the properties of institution on the other hand (see fig. 6). This means that the former and the latter do not coincide permanently: there may be internal tensions between these constituents of institution. For example, the instauration of current federal constitutional law of the CMCEE was possible because of the moral authority of the President who proposed it to the syndicate chamber. This law was a vector of intensification and systematization of relationships and consolidation of common resources between federate members, and allowed to accelerate this trend. But it was possible to implement it because this trend towards intensification and systematization had already begun and because a majority of the CMCEE’s members had interiorized the idea of this trend.

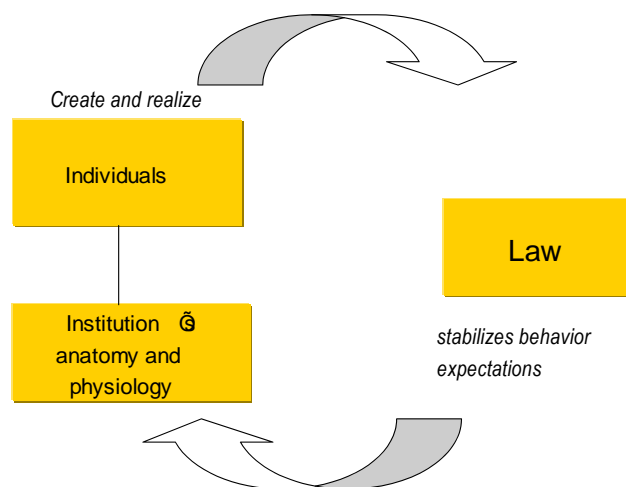


Fig. 6 Dialectic tension between law and other components of the institution

It may be unreasonable utopia to change radically the life of an aged firm only through instauration of a new political constitutional law. For example, the establishment of a democratic political constitutional law is probably not possible

if the firm has not reached a high degree of institutional “personification” in the sense of Hauriou. Considering political constitutional law as a control parameter of the firm looks easier if used as a grid of observation and deciphering of the firm’s performance rather than as a management tool. However, such knowledge may be useful at some privileged moments, when firms have to change their statutes because of major organizational or business transformation. Then the art of “political constitutional law design” would rely on the ability to choose the appropriate degree of tension between institution and law, in order to implement viable change.

CONCLUSION

There is nowadays a growing research community in France and continental Europe about the life of firms with untypical institutional architecture, the so-called “Coopératives” and “Mutuelles”. Although many of these firms exist since the end of the XIXth Century, their institutional and organizational peculiarities are not well known. Establishing some relationship between these peculiarities and the efficiency of these firms is a great challenge, not only for researcher but also for authorities, because many lobbies exert pressure to obtain their suppression or at least their transformation into classical firms.

The general theory of interconnected practices may offer major access roads to the comparative assessment of several institutional types of firms, in relationship with their organization features and their efficiency.

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REFERENCES

- ANSOFF Harry Igor (French Transl.) (1970), *Stratégie du développement de l'entreprise, analyse d'une politique de croissance et d'expansion*. Hommes et Techniques : Paris, France
- BOURDIEU, Pierre (1977), *Outline of a Theory of Practice*. Cambridge University Press: New York, USA.
- BOURDIEU, Pierre (1990), *The logic of Practice*. Stanford University Press: Stanford, USA.
- BRAUMANN, Franz (1966), *Car j'ai eu faim*. Coprur : Strasbourg, France.
- DESMICHT, François (2004), *Pratique de l'activité bancaire*. Dunod: Paris.
- [DG, 1] (2005), *Statuts de la Caisse de Crédit Mutuel adhérente à la Fédération du Crédit Mutuel Centre Est Europe*; internal document of the Crédit mutuel Centre Est Europe "DROIT GENERAL", mars 2005, réf 51.01.82
- [DG, 2] (2001), *Règlement général de fonctionnement des Caisses de Crédit Mutuel adhérentes à la Fédération du Centre Est Europe*; internal document of the Crédit mutuel Centre Est Europe, réf SOFEDIS 51.01.37
- FERRARY, Michel et Yvon PESQUEUX (2006), *Le management de la connaissance - Knowledge management, apprentissage organisationnel, société de la connaissance*. Economica: Paris, France.
- FELDMAN, Martha S. (2003), "A performative perspective on stability and change in organizational routines". *Industrial and Corporate Change*, **12**, 727-752.
- FREUND, Julien (1965), *L'essence du politique*. Sirey: Paris, France.
- GIDDENS, Antony (1984), *The constitution of society*. Polity Press: Cambridge, United Kingdom
- JARDAT Rémi (2005), *Stratifier / Modéliser – une archéologie française du management stratégique – Etude par la méthode archéologique de Michel Foucault*. Thèse de doctorat, Conservatoire National des Arts et Métiers, Paris.

- JARDAT Rémi (2006), *Practices, organizational learning and theory of constitutional law : the Crédit Mutuel Case*, Euram Colloquium, may 2006, Oslo
- JARDAT Rémi (2007), *From political constitution to practice : interaction between institutional and organizational routines*, Euram Colloquium, may 2007, Paris
- JEFFERS, Esther (2005), *La Très Grande Bagarre Bancaire Européenne*. Economica: Paris, France.
- GIGACZ Stefan (1996), "Law's Third Dimensions: International Associations and NGOs in the Global Legal Order, *mémoire présenté pour "Master's Course in Legal Theory"*. European Academy of Legal Theory, Katholieke Universiteit Brussel – Facultés Universités Saint-Louis: Bruxelles, Belgium.
- GUESLIN, André (1982), *Le Crédit Mutuel, de la caisse rurale à la banque sociale*. Coprur : Strasbourg, France.
- HABERMAS, Jürgen (French Transl.)(1997), *Droit et démocratie – entre faits en norms*. Gallimard: Paris, France
- HAURIOU, Maurice (1925), "La théorie de l'institution et de la fondation", *Cahiers de la nouvelle journée*. **4**, 2-45.
- HAURIOU, Maurice (2nd Edition) (1929), *Précis de droit constitutionnel*. SIREY: Paris, France.
- HAURIOU, Maurice (1986), *Aux sources du droit : le pouvoir, l'ordre et la liberté*. Centre de philosophie politique et juridique : CAEN, France.
- LATOUR, Bruno (1987), *Science in action. How to Follow Scientists and Engineers through Society*. Harvard University Press: Cambridge, USA.
- MACINTYRE, Alasdair (1985), *After Virtue*. Duckworth, second edition.
- OPPETIT Bruno (1999), *Philosophie du droit*. Dalloz: Paris, France.
- PENTLAND Brian T. and Martha S. FELDMAN (2005), "Organizational routines as a unit of analysis". *Industrial and Corporate Change*, **14**, 793-815.
- PESQUEUX Yvon (2007), *Gouvernance et privatization*. YYYYY : Paris, France.
- PARKINSON, Cyril Northcote (French translation)(1958), *1 = 2 ou les Règles d'or de M. Parkinson*. Robert Laffont: Paris, France.
- SADOUN, Bernard (2005), *Les origines du Crédit Mutuel*. Coprur: Strasbourg, France.
- SCHMITT, Carl (French transl.) (1993), *Théorie de la constitution*. P.U.F.: Paris, France.
- SEWELL, W. (1992), "A theory of structure: duality, agency and transformation," *American Journal of Sociology*, **98**, 1-29.

- SFEZ, Lucien (1966), *Essai sur la contribution du doyen Hauriou au droit administrative français*. LGDJ : Paris, France.
- TURPIN, Dominique (1992), *Droit constitutionnel*. P.U.F.: Paris, France.
- VALENTIN Vincent (2002), *Les conceptions néo-libérales du droit*. Economica: Paris, France